

**REMARKS**

Applicant respectfully requests further examination and reconsideration in view of the amendments above and the comments set forth fully below. By the above amendments, claim 7 is amended. Previously withdrawn claims 13-32 are canceled. New claims 35-41 are added. Accordingly, claims 1-12 and 33-41 are currently pending in this application.

**Notice of Non-Compliance**

Within the Notice of Non-Compliance, it is stated that the newly filed claims are non-compliant because new claims should not have markings. The listing of claims above now provides new claims 35-41 without markings.

**Rejection under §§ 103**

Within the Office Action, claims 1-4, 6-9, 11-12, and 33-34 are rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 4,249,740 to Cheney et al. (hereinafter “Cheney”) in view of United States Patent No. 6,817,613 to Hasek (hereinafter “Hasek”). Also within the Office Action, claims 5 and 10 are rejected under 35 U.S.C. §103(a) as being unpatentable over Cheney in view of Hasek and further in view of United States Patent No. 4,046,381 to Comeaux (hereinafter “Comeaux”). The Applicant respectfully traverses these rejections.

The claimed sixth game pieces includes a first one having a first color, a second one having a second color, a third one have a third color, and a fourth one, having a fourth color. Within the Office Action, the Examiner has cited Cheney as having a sixth game piece, and specifically cited the time rings 68, 69, 70 of Figure 9 (Cheney). As acknowledged by the Examiner, Cheney teaches only three different types of time rings (elements 68, 69, 70), each time ring designated by a specific color. The Examiner has cited Hasek as teaching an element (time line 18) that includes more than four colors, and proposed that Cheney be adapted to include four different time rings in view of Hasek. The Applicant

contends that such an adaptations is not within the teachings of Cheney. Cheney specifically teaches a three-time frame paradigm, past, contemporary, and future, where each time frame, as indicated by a time ring, corresponds to a different color. Cheney does not teach a fourth different type of ring, and as such it is not possible to designate a fourth type of time ring with a fourth color as proposed by the Examiner. Cheney restricts the different colors according to the number of different types of time rings. As only three different types of time rings are taught by Cheney, time rings 68, 69, 70, only a maximum of three different colors can be used within the context of Cheney. Adapting Cheney to include more than the taught three time frames would not only add new game pieces, including a fourth set of chess pieces at a different size than the other three sets and a fourth set of time rings, but would also change the rules of the game. Such changes are beyond the scope of what someone skilled in the art would deem reasonable.

The Examiner contends that the colors of the sixth game pieces of Cheney (the time rings 68, 69, 70) are demonstrating a time line with respect to past, present, future, and that the time line taught in Cheney can be altered to be represented by years, months, weeks, days, and several other ways to indicate past, present and future times. However, no such adaptation of the time line definition is taught by Cheney, and such a conclusion reached by the Examiner is reached merely by hindsight of the Applicants invention. In fact, Cheney specifically teaches a three time line configuration that is not adaptable to more or less than three. Specifically, three different time rings are taught, time rings 68, 69, 70, and three different sets of chess pieces are taught, each different set distinguished by a different size of pieces, all configured according to past, contemporary, and future time frames (Cheney, Figure 1, 2, 4, 10; col. 1, lines 46-57).

Further, adapting the definition of a time line, as proposed by the Examiner, is no more than adapting the rules of play, which as acknowledged by the Examiner does not limit a claimed apparatus, and as such has no apparatus structure. The Examiner contends that “in order to make the game more challenging, it would have been obvious to present the Cheney time line in more than three and at least four different sections to be represented by four different colors.” Again, “making the game more

challenging” is not related to an apparatus structure, but instead to a method of play, and the rules for playing the game. As such, the Examiner’s argument is directed to game play, and not directed to a structure, and is therefore not applicable to the claimed board game.

Further, it is improper to combine the teachings of Hasek with Cheney. The color components of Cheney are specifically directed to game pieces, the time rings 68, 69, 70. The color component of Hasek is specifically directed to the game board, time line 18. The Examiner contends that the time rings 68, 69, 70 of Cheney demonstrate a time line with respect to past, present, and future, and as such both the time rings 68, 69, 70 of Cheney and the time line 18 of Hasek are related. The Applicant contends that such a conclusion is invalid, as the relatedness of a time line corresponds to a method of play, not a structural limitation. The structure of the game pieces and the structure of the game board are separate and distinct, and applying modifications related to a game board does not indicate similar changes to the game pieces, as the two are not of the same structure. Again, the Examiner is attempting to apply method of game play, e.g. establishing a relationship between two non-related structural items (game board and game piece), to the structural limitations of the claimed board game.

The independent claim 1 includes the limitation “a plurality of sixth game pieces designated by a sixth type, wherein a first one of the sixth game pieces is designated by a first color and associated with each one of the plurality of second game pieces, a second one of the sixth game pieces is designated by a second color and associated with each one of the plurality of third game pieces, a third one of the sixth game pieces is designated by a third color and associated with each one of the plurality of fourth game pieces, and a fourth one of the sixth game pieces is designated by a fourth color and associated with each one of the plurality of fifth game pieces .” As described above, neither Cheney, Hasek, nor their combination teach a sixth type of game piece, four of which have a different color. Further, the proposed adaptation of Cheney relies on hindsight of the present invention. Still further, the proposed adaptation of Cheney relies of methods of game play and not structural limitations. Further, the proposed adaptation is not proper.

For at least theses reasons, the Applicant respectfully submits that claim 1 is allowable over

Cheney, Hasek, and their combination. Since claims 2-6 and 33 are dependent upon claim 1, claim 2-6 and 33 are each also allowable as being dependent upon an allowable base claim.

The claimed first game pieces are each structurally designed such that when two or more of the first game pieces come together, that is when an upstanding face of each first game piece comes in contact with each other, the two or more first game pieces that are in face to face contact with each other form a new game piece structure. Each upstanding face included either a protrusion extending away from the upstanding face or an indentation into the upstanding face. The indentation on one upstanding surface is configured to receive the protrusion extending from another upstanding surface when the two first game pieces are positioned face to face, thereby interlocking the two first game pieces. Specifically, refer to Figure 3, element 140, and Figures 12-14 of the present specification. The physical structures of each individual first game piece are configured to form new structures when placed in contact with one another.

The independent claim 7 includes the limitation “a plurality of first game pieces designated by a first type each having at least one upstanding face including a protrusion extending from the upstanding face or an indentation into the upstanding face, wherein each one of the first game pieces is configured to come in face to face contact with at least one of the other first game pieces to form new game piece structures, further wherein the indentation from the upstanding face of one first game piece is configured to receive the protrusion from the upstanding face of the other first game piece, thereby interlocking the first game pieces.” There is no hint, teaching, or suggestion within either Cheney or Hasek that any of the chess game pieces are configured with upstanding faces that include either a protrusion or indentation configured to interlock with adjoining game pieces.

For at least these reasons, the Applicant respectfully submits that claim 7 is allowable over Cheney, Hasek, and their combination. Since claims 8-12 and 34 are dependent upon claim 7, claims 8-12 and 34 are each also allowable as being dependent upon an allowable base claim.

The new independent claim 35 includes the limitation “a plurality of first game pieces designated by a first type each having two upstanding faces, each face having a full-height of the first game piece, wherein each one of the first game pieces is configured to come in face to face contact with at least one of the other first game pieces to form new game piece structures, further wherein when two or more first game pieces are in face to face contact the resulting new game piece structure has a dimension that is longer than a square on the grid.”

Cheney teaches game pieces that include base structures configured to match with base structures of other pieces. In this manner, the base structures of adjoining pieces come in contact with one another. However, the base structure of each piece only accounts for a small portion of the overall height of the game piece (Cheney, Figures 1-4). Specifically, Figure 3 of Cheney shows the head of each queen, indicated by a circle, within the perimeter of the base structure. Cheney does not teach game pieces with upstanding faces having a full-height of the game piece.

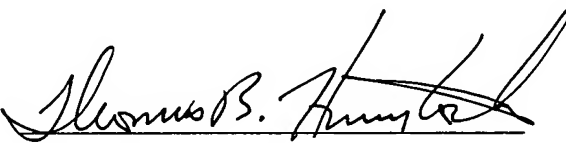
Further, Cheney teaches that each of the game pieces is sized so that when two or more game pieces come together in contact, all contacted game pieces occupy the same square. In other words, the dimensions of the game pieces are such that when multiple pieces come in contact, their combined geometry does not result in a dimension that is longer than the single square they occupy (Cheney, Figures 3 and 7). As such, Cheney does not teach that when two or more game pieces come in face to face contact the resulting new game piece structure has a dimension that is longer than a square on the grid.

For at least these reasons, the new independent claim 35 is allowable over Cheney, Hasek, and their combination. Since claims 36-41 are dependent upon claim 35, claims 36-41 are each also allowable as being dependent upon an allowable base claim.

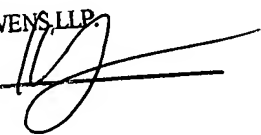
In view of the foregoing, the Applicant respectfully submits that all claims, namely claims 1-12 and 33-41, are in condition for allowance. Reconsideration of the rejections is requested. Allowance is earnestly solicited at the earliest possible date. The Examiner is encouraged to call the undersigned at (408) 530-9700, with questions or comments so that any outstanding issues can be expeditiously resolved.

Respectfully submitted,  
HAVERSTOCK & OWENS LLP

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